

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOSEPH DiCOSOLA, individually and)	
on behalf of a class,)	
)	
Plaintiff,)	
)	
v.)	No. 07 C 6748
)	
CAFE CENTRAL, INC.,)	Honorable Ronald A. Guzman
)	Judge Presiding
Defendant.)	

MOTION TO QUASH

Petitioners, RALPH E. CRUZ and R.N.R CORPORATION, INC., by and through their undersigned attorney, DAVID S. RODRIGUEZ, pursuant to Rule 4(h) of the Federal Rules of Civil Procedure, move this Honorable Court to quash the return of summons served on Petitioner on January 30, 2008, as follows:

1. Petitioner Ralph E. Cruz is President of R.N.R. Corporation, Inc., an Illinois corporation. See, Exhibit A attached hereto.
2. Petitioner R.N.R. Corporation, Inc., operates a restaurant known as “Cafe Central” at 1437 West Chicago Avenue, Chicago, Illinois 60622.
3. Defendant, Cafe Central, Inc., is an Illinois corporation, with Carlos Nieto being the President thereof. See, Exhibit B attached hereto.
4. Plaintiff’s complaint alleges, in part, that:

“Defendant Cafe Central, Inc. (hereinafter, “Cafe Central”) is an Illinois corporation which owns and operates a restaurant called [sic] at *455 Central Avenue, Highland Park, Illinois 60635.*” (Emphasis added)

Compl. ¶ 15.

5. Notwithstanding the apparent concurrent use of the name “Cafe Central” by the

Petitioners and the Defendant, the Petitioners and the Defendant operate distinct businesses and are not associated in any manner. See, Exhibit C, Affidavit of Ralph E. Cruz, attached hereto.

6. Accordingly, Ralph E. Cruz is not an officer or other agent authorized by appointment or by law to receive service of process on behalf of Defendant Cafe Central, Inc. Fed. R. Civ. P. 4(h).

7. Nevertheless, on January 30, 2008, Ralph E. Cruz was served with a Summons in a Civil Action on behalf of Defendant Cafe Central, Inc. in error.

WHEREFORE, petitioners, Ralph E. Cruz and R.N.R. Corporation, Inc., respectfully request that this Honorable Court grant this motion and enter an order to quash the return of summons served on Ralph E. Cruz on January 30, 2008.

Respectfully submitted,

R.N.R. Corporation, Inc.

s/David S. Rodriguez

By: _____
Attorney for Petitioner

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